IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 30838 of 2003(U)

PETITIONER:

B.R.VALSALA, WIFE OF LATE VIVEKANANDAN
ANANDA BHAVAN, ARUMANOOR DESOM, POOVAR,
THIRUPURAM PAKUTHY, NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.V.SURESH
SRI.G.SUDHEER

RESPONDENTS:

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1. LEKSHMI SUMATHY, AGED 73 YEARS,
T.C.20/23, KARAMANA POST OFFICE,
THIRUVANANTHAPURAM TALUK, THIRUVANANTHAPURAM DIST.

2. SANTHA, AGED 53 YEARS, OF DO. DO.

3. SYAMALA, AGED ABOUT 50 YEARS,
OF DO. DO.

4. GOPU, AGED 47 YEARS, OF DO. DO.

5. KOMALA, AGED 41 YEARS, OF DO. DO.

6. MANGALAM, AGED 39 YEARS, OF DO. DO.

7. RAJESWARI, AGED 37 YEARS, OF DO. DO.

8. SREEKUMARI, AGED 35 YEARS, OF DO. DO.

9. SUKUMARAN, T.C.20/24 OF DO. DO.

R1,R4,R7 & R8 BY ADV. SRI.RAM MOHAN.G.
SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S.835/98 FILED BEFORE THE MUNSIFF COURT, THIRUVANANTHAPURAM DATED 7/4/1998.

EXT.P2: COPY OF THE ORDER IN I.A.NO.686/1998 IN O.S.NO.835/98 DATED 16/4/1998 OF THE DISTRICT JUDGE, THRIRUVANANTHAPURAM.

EXT.P3: COPY OF THE COMMISSION REPORT DATED 18/5/1998 FILED IN I.A.687/98 IN O.S.NO.835/1998 BEFORE THE DISTRICT COURT, THIRUVANANTHAPURAM.

EXT.P4: COPY OF THE COMMISSION REPORT AND PLAN DATED 1/12/1999 IN I.A.8473/1999 IN O.S.835/1998.

EXT.P5: COPY OF I.A.NO.9490/2002 IN O.S.835/1998 DATED 22/11/2002.

EXT.P6: COPY OF REVIEW PETITION IN O.S.NO.835/1998 DATED 20/2/2003.

EXT.P7: COPY OF ORDER IN I.A.2114/2003 IN O.S.NO.835/98 DATED 5/8/2003 OF THE PRL.MUNSIFF COURT, THIRUVNANTHAPURAM.

EXT.P8: COPY OF THE SURVEY PLAN ISSUED BY TECHNICAL ASST. CENTRAL SURVEY OFFICE, TRIVANDRUM.

EXT.P9: COPY OF THE TAX RECEIPT DATED 15.11.1994.

EXT.P10: COPY OF OBJECTION FILED BY THE 1ST DEFENDANT IN O.S.NO.835/1998 DATED 20/6/2003.

TRUE COPY

P.A.TO JUDGE

PIUS C. KURIAKOSE,J.

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W.P.(C) No.30838 of 2003

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Dated: 21st June, 2007

JUDGMENT

The strenuous and persuasive submissions of Mr.V.Suresh, counsel for the petitioner notwithstanding, I am unable to agree with him when he says that Ext.P7 order is so wholly unreasonable as to warrant correction by this court in the supervisory jurisdiction under Article 227 of the Constitution which is exceptional and is expected to be invoked only when it is absolutely necessary. The learned Munsiff has in Ext.P7 stated that the order which was sought to be reviewed as per the I.A. upon which Ext.P7 is order passed is a well reasoned one. Unfortunately copy of that order is yet to be produced by the petitioner. But it must be noticed that several observations touching the merits of the suit has been made by the learned Munsiff in Ext.P7. Those observations were unwarranted though the ultimate decision to dismiss the I.A. was certainly justified. I dismiss the Writ Petition confirming Ext.P7. But at the same time I permit the petitioner to file objections to the two commissioner's report referred to in Ext.P7 and to cross-examine the Commissioners concerned during trial. If the learned Munsiff is convinced on the basis of the evidence which comes to be on record regarding the Commissioner's reports that a

measurement is necessary, confirmation of Ext.P7 by this court will not stand in the way of the learned Munsiff issuing a commission for measurement. In order to enable the compliance of the above direction meaningfully, there will be a direction that after the entire evidence in the suit comes on record, the parties will be heard initially on the question of acceptability of the commission report and an order be given regarding the same.

srd **PIUS C.KURIAKOSE, JUDGE**